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Section 53-30, Town Code of the Town of DeWitt, Onondaga County, New York

§ 53-30. Sign regulations. [Amended 12-18-67; 3-26-73]

A. General regulations. The following regulations apply to all signs:

(1) No sign in any district may extend over a sidewalk or public right-of-way.

(2) No sign in any district, unless attached to a building, shall be located nearer to a street line than twenty-five (25) feet, nor nearer to a side line than ten (10) feet, except in an Industrial District where it shall not be nearer than thirty-five (35) feet to a side line.

(3) No sign in excess of ten (10) square feet in area shall hereafter be erected, installed or altered except upon written sign permit issued by the Building Code Enforcement Officer.

(4) The area of a sign shall be measured by the area of its background frame where such a frame has been effected by materials, paint, lighting or other means. If the total rectangular areas of letter and symbol groupings in a sign are less than forty percent (40%) of the area of its frame, the maximum permitted area of the sign may be increased by sixty percent (60%). Where a sign consists solely of independent letters or symbols without such a frame, its area shall be measured by the rectangular areas encompassing the letter or symbol groupings. In all districts, except Industrial Districts, for each fifty (50) feet beyond the first hundred (100) feet in depth that a sign is located from the nearest highway, an additional ten percent (10%) may be added to the permitted area of the sign up to a maximum of one hundred percent (100%).

(5) Advertising display upon any structure shall be regarded as a sign subject to this ordinance.

(6) No sign attached to a building in any district other than an Industrial District shall project above the height of the wall upon which it is attached. No sign shall be attached to a wall or facade higher than the average height of the remaining walls of the building. No freestanding sign shall be higher than twenty-five (25) feet above the grade.

(7) No illuminated sign or outdoor illumination shall direct light in a way which would create a traffic hazard, or be unreasonably detrimental to adjoining or neighboring residences.

(8) All accessory advertising devices of commercial enterprises other than signs permitted by these regulations, such as, but not limited to, bunting, pennants, pinwheels, streamers or peripheral lighting are prohibited. No sign shall be flashing, revolving, animated or otherwise in motion. Permits for the temporary display of special announcements for the opening or closing of a business, or for other specific purpose may be granted by the Building Code Enforcement Officer, upon controlled site approval of the Planning Board in accordance with Article XI.

(9) No sign shall obstruct any fire escape, window, door or opening used as a means of egress, for fire-fighting purposes or for ventilation. No sign shall be placed on any sidewalk, hydrant, lamppost, tree, utility pole, fence, or on other public property, except as permitted by other provisions of this section.

(10) All signs which do not conform to the regulations of this ordinance shall be brought into conformity or removed by January 1, 1978. No structural element of a nonconforming sign may be changed unless the resulting sign complies with the current regulations of this ordinance.

(11) Multiple-use establishments in nonresidential districts shall be subject to the following regulations:

(a) Signs for two (2) or more separate business establishments on the same lot or in the same building shall require controlled site approval of the Planning Board as provided in Article XI and upon the further finding that such signs are of a design compatible in style and color with one another.

(b) Shopping centers containing more than six (6) business establishments or over fifty thousand (50,000) square feet of gross floor area shall additionally be permitted to have one (1) shopping center identification sign which may be freestanding, the area of which shall not exceed one and one-half (1½) times the allowable area of a sign in the district at its proposed location, provided that the maximum area of signs for each single establishment within the shopping center visible from the property line shall be reduced by one-half (½).

(c) Shopping centers containing over five hundred thousand (500,000) square feet of gross floor area shall additionally be permitted to have two (2) shopping center identification signs, which

may be freestanding, the total combined areas of which shall not exceed twice the allowable area of a sign in the district at its proposed location, provided that the maximum area of signs for each single establishment within the shopping center visible from the property line shall be reduced by one-half (½).

(d) Enclosed mall shopping centers containing over five hundred thousand (500,000) square feet of gross floor area shall be permitted to have three (3) shopping center identification signs, which may be freestanding, the total combined areas of which shall not exceed three (3) times the allowable area of a sign in the district at its proposed location, provided there are no other shopping center signs visible from the property line.

(12) In all office, industrial or similar complexes consisting of two (2) or more buildings, no sign identifying said complex shall be erected or used except upon controlled site approval of the Planning Board in accordance with Article XI.

(13) In all districts except residential districts, a single non-illuminated temporary advertising sign for the sale or rental of the property upon which it is located may be erected or used except that it may not exceed sixteen (16) square feet in area and must be removed within fourteen (14) days of sale or rental.

B. In residential districts, no sign shall be erected or used except:

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(1) A single professional or announcement sign which may be illuminated by white light, nor more than two (2) square feet in an area not more than six (6) inches in depth, attached to and parallel with a principal building facade so that its top shall not extend higher than eight (8) feet above finished grade.

(2) A single nonilluminated temporary advertising sign which may be freestanding or attached to the building, nor more than three (3) square feet in area, for the sale or rental of the property upon which it is located, provided that such sign is removed within fourteen (14) days of sale or rental.

(3) A single advertising sign which may be illuminated by white light on one (1) or two (2) faces and may be freestanding or attached to the building but which shall not be more than two (2) square feet in area, for the sale of agricultural products grown on the premises.

(4) Identification signs for multiple-family dwelling projects upon controlled site approval of the Planning Board in accordance with Article XI.

(5) Signs of duly constituted governmental bodies, including traffic or similar regulatory devices, legal notices or appropriate to public or quasi-public buildings.

(6) Signs, posters, flags, plaques or emblems of a temporary nature of political, civic, philanthropic, educational or religious organizations.

(7) Signs not visible off the lot upon which they are situated.

(8) Nonilluminated directional and identification signs not more than one and one-half (1½) square feet in area.

(9) Single builders', architects' and engineers' signs not more than fifteen (15) square feet in area may be erected on a construction site during construction, provided that such sign shall be removed within fourteen (14) days after completion.

C. In Business Transitional Districts, no sign shall be erected or used except:

(1) Those permitted in residential districts.

(2) No more than one (1) sign per street facade for the identification of each primary business conducted on the premises (or its proprietor), not to include advertising of specific products. Each sign shall be attached to and parallel with a street facade of the principal building, may be illuminated and shall have a total area not greater than eight percent (8%) of that proportion of such facade as the floor space of such primary business bears to the total floor space of the building, but not greater than fifty (50) square feet, except as may be modified by provisions of the general regulations.

D. In Business Districts, no sign shall be erected or used except:

(1) Those permitted in residential districts.

(2) Not more than three (3) signs for the identification of each business conducted on the premises. Such signs shall be attached to and parallel with a street facade of the principal building, may be illuminated, and shall have a total area not greater than ten percent (10%) of that proportion of such facade as the floor space for such business bears to the total floor space of the

building, but not greater than a total of seventy-five (75) square feet, except as may be modified by provisions of the general regulations.

E. In Industrial Districts, no sign shall be erected or used except:

(1) Signs permitted in business districts.

(2) Not more than three (3) signs for the identification of an industrial activity conducted on the premises. Such signs may be illuminated, may be freestanding or attached to the building and shall have a total area not greater than fifteen percent (15%) of a street facade of the principal building but not greater than a total of one thousand (1,000) square feet, except as may be modified by provisions of the general regulations.

Memorandum Decision of the Court of Appeals of New York, dated May 4, 1982

STATE OF NEW YORK
COURT OF APPEALS

4 No. 204
Syracuse Savings Bank, et al.,

Appellants,

v.

Town of DeWitt,

Respondent.

(204) Leonard C. Koldin & Benjamin D. Levine, Syracuse, for appellants.

Eric M. Alderman, Joseph W. Jerry, & Bernard Samuels, Syracuse, for respondent.

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

MEMORANDUM.

The order of the Appellate Division should be modified, with costs to respondent, to the extent of directing judgment in favor of defendant declaring that Section 53-30 of the Town Code of the Town of DeWitt is constitutional insofar as it regulates commercial speech.

In this action seeking a declaration that the "Sign Ordinance" of the Town of DeWitt is unconstitutional the Appellate Division affirmed Supreme Court's dismissal of the complaint on the motion of defendant Town for summary judgment. Inasmuch as plaintiffs tendered no evidentiary proof

in admissible form[1] there is no evidence before us as to the practical application of the ordinance or its prospective impact in the Town of DeWitt, and no showing of facts sufficient to require an evidentiary hearing as to issues of fact. Accordingly, on the record before us the sign ordinance can be considered only in the abstract without consideration of any impact on plaintiffs. From that very narrow perspective we perceive no error made by the courts below in upholding the constitutionality and validity of the ordinance against the challenges mounted by plaintiffs. We address only the principal contentions advanced by plaintiffs in our Court.

At the threshold we observe that because plaintiffs, an extensive assemblage of business and commercial enterprises in the Town, have shown no direct interest in noncommercial speech and no commercial interest in others who themselves have such an interest, they lack standing to raise any constitutional First Amendment argument of overbreadth to challenge the ordinance to the extent that it regulates, or may be said to regulate, non-commercial speech.

With reference to the application of the ordinance to commercial speech, we cannot conclude that the near total proscription of free standing signs or the regulation of on-building facade signs as to size and height do not constitute, on the face of the ordinance, a permissible constraint only as to

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[1]The only exception, immaterial for present purposes, was the affidavit of the former Town Director of Police with respect to conditions of vehicular and pedestrian traffic in the Town and his opinion as to the impact of the sign ordinance thereon.

Contrast, for instance, the extensive discovery leading to the comprehensive stipulation of facts on which the courts' rulings were based in *Metromedia, Inc. v City of San Diego* (___ US ___, 49 USLW 4925), on the basis of which plaintiffs sought and obtained leave to appeal in this case.

location and manner *(Suffolk Outdoor Adv. Co. v Hulse,* 43 NY2d 483; *Modjeska Sign Studios v Berle,* 43 NY2d 468). Nor is there any proof in the record that the four-year, nine-month period between the adoption of the ordinance and its effective date created an impermissibly short amortization period.[2]

Inasmuch as this is a declaratory judgment action, the proper disposition on the granting of defendant's motion for summary judgment should have been a declaration that the sign ordinance is constitutional rather than a dismissal of the complaint *(Lanza v Wagner,* 11 NY2d 317, 334).

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Order modified, with costs to respondent, in accordance with the memorandum herein and, as so modified, affirmed. Chief Judge Cooke and Judges Jasen, Gabrielli, Jones, Wachtler, Fuchsberg and Meyer concur.

Decided May 4, 1982

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[2]We note the provision in the order of Supreme Court, affirmed at the Appellate Division and left standing by us, "that all rights are reserved to the individual plaintiffs to apply for appropriate administrative relief from the defendant upon a proper demonstration of need for such relief."